

REMARKS/ARGUMENTS

An RCE with an IDS has been filed.

The amendment to Claim 15 addresses the Examiner's comment regarding the possibility that the term "other neurotoxic acaricidal substance" could imply that sodium bicarbonate is neurotoxic. Other amendments to previously presented claims are formal in nature and are supported by the claims as filed. New Claims 29-32 are supported at specification page 4, lines 2-7. No new matter has been added.

The broadest reasonable interpretation of independent Claim 15 requires the knowing, purposeful application of a solution of sodium bicarbonate to, e.g., a rug or carpet, in order to treat the rug or carpet for acarids.<sup>1</sup> In Claim 15 no neurotoxic acaricidal substance can be present in the solution, and in Claims 28 and 32 the solution must in addition be free of any other acaricidal substance other than sodium bicarbonate. Certainly, for such a method to be obvious it has to be shown that it was previously known in the art that sodium bicarbonate was effective to treat acarids.

This has not been done.

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<sup>1</sup> Claim 15 uses "in need thereof" language held, in *Jansen v. Rexall Sundown Inc.*, 68 U.S.P.Q.2d 1154 (Fed. Cir. 2003), to require the specific intent to achieve the claimed objective (i.e., treatment for acarids). Specifically, the Federal Circuit stated that:

... the claim preamble sets forth the objective of the method, and the body of the claim directs that the method be performed on someone 'in need.' In both cases, the claims' recitation of a patient or a human 'in need' gives life and meaning to preambles. [Citation omitted]. The preamble is therefore not merely a statement of effect that may or may not be desired or appreciated. Rather, it is a statement of the intentional purpose for which the method must be performed. We need not decide whether we would reach the same conclusion if either of the 'treating or preventing' phrase or the 'to a human in need thereof' phrase was not a part of the claim; together, however, they compel the claim construction arrived at by both the district court and this court. *Jansen* at 1158 (emphasis added).

Thus, according to the Federal Circuit, claims directed to methods of treatment to be performed on those persons or things "in need of" such treatment require the specific intent to effect such treatment.

Einziger discloses a slurry containing micron-sized bicarbonate particles useful as an additive in “health related, personal care, biologically active, household, and specialty type products.” [0006]. This use of an alkali metal bicarbonate as an additive is clearly disclosed in Claim 14 of Einziger:

14. A method of using the slurry of claim 3 comprising (1) incorporating said slurry with other materials to form a bicarbonate containing product selected from the group consisting of a dialyzate, a toothpaste, a personal cleanser, a chewing gum, an antacid, a mouthwash, a deodorant, a detergent, a skin care product, a household cleanser, an industrial cleaner, a blasting medium, an animal feed product, a baking product and a pesticidal product by dissolving from about 10.00 to about 12.00% by weight of the slurry in about 88 to about 92% by weight of additional water, based upon 100% total weight of the slurry and additional water to form an aqueous dilution, and (2) further incorporating said other materials.

Interestingly, only Claims 14 and 23 (claiming a pesticidal product comprising the disclosed slurry) of Einziger mention the word “pesticide,” with absolutely no description thereof appearing in the supporting specification. Thus, and clearly, Einziger does not suggest that the bicarbonate itself is pesticidally active, and does not suggest treating acarids with sodium bicarbonate as claimed.

Vrba relates to an insecticide containing pyrogenically produced hydrophobic silica.

Guerassimoff discloses a pesticide composition containing finely ground amorphous silica.

Simpson sprays bicarbonate solution on the backing material of a carpet to maximize deodorancy (column 2, lines 55-56).

Howari is cited for the proposition that aqueous solutions of sodium bicarbonate will form crystals when dried.

Potter discloses problems caused by chiggers.

Finally, Hart relates to the life cycle and reproduction of house-dust mites.

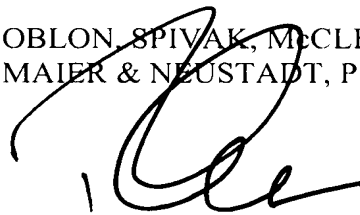
Given these disclosures, nothing in even the combination of art cited herein could render the presently claimed method obvious, as no reference recognizes the ability of a

sodium bicarbonate solution to be effective in the treatment of acarids. Because the broadest reasonable interpretation of independent Claim 15 requires the knowing, purposeful application of a solution of sodium bicarbonate to, e.g., a rug or carpet, in order to treat the rug or carpet for acarids, the rejection should be reconsidered and withdrawn. Claims 28 and 32, in which the solution must in addition be free of any other acaricidal substance other than sodium bicarbonate, are even further removed from the references.

In view of the above, Applicants submit that all outstanding issues have been addressed. Therefore, an early Notice of Allowance is earnestly solicited.

Respectfully submitted,

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